

1 favoring amendment be applied with “extreme liberality.” Owens v. Kaiser Found. Health Plan,
 2 Inc., 244 F.3d 708, 712 (9th Cir. 2001); Morongo Band of Mission Indians v. Rose, 893 F.2d 1074,
 3 1079 (9th Cir. 1990).

4 The court will grant defendant’s Motion and dismiss plaintiff’s Complaint (Dkt. 1) with leave
 5 to amend. In preparing the First Amended Complaint, plaintiff shall carefully evaluate the
 6 contentions set forth in defendant’s Motion. For example, the court is skeptical that plaintiff has
 7 sufficiently alleged facts to support his claim for copyright infringement because plaintiff must
 8 allege facts regarding the copying of his copyrighted works, not simply the ideas underlying his
 9 copyrighted works. (See Dkt. 1, Complaint at ¶¶ 8, 20, 60-61, 63; Dkt. 24, Opposition to Motion
 10 to Dismiss at 2); see Mazer v. Stein, 347 U.S. 201, 217, 74 S.Ct. 460, 470 (1954) (“Unlike a
 11 patent, a copyright gives no exclusive right to the art disclosed; protection is given only to the
 12 expression of the idea – not the idea itself.”). Further, the court is concerned that the allegedly
 13 infringing work predates plaintiff’s copyrighted work. (See Dkt. 21, Motion at 10-11).

14 Based on the foregoing, IT IS ORDERED THAT:

- 15 1. Defendant’s Motion to Dismiss (**Document No. 21**) is **granted**.
- 16 2. The Complaint (**Document No. 1**) is **dismissed with leave to amend**.
- 17 3. If plaintiff still wishes to pursue this action, he is granted until **December 21, 2017**,
 18 to file a first amended complaint attempting to cure the deficiencies set forth above as well as the
 19 other alleged defects outlined in defendant’s Motion. The court expects that defendant will agree
 20 to any amendments that will or attempt to cure the alleged defects.
- 21 4. The first amended complaint must be labeled “First Amended Complaint,” filed in
 22 compliance with Local Rule 3-2 and contain the case number assigned to the case, i.e., Case No.
 23 ED CV 17-1684 FMO (SHKx). In addition, plaintiff is informed that the court cannot refer to a prior
 24 pleading in order to make its First Amended Complaint complete. Local Rule 15-2 requires that
 25 an amended pleading be complete in and of itself without reference to any prior pleading. This
 26 is because, as a general rule, an amended pleading supersedes the original pleading. See
 27 Ramirez v. Cnty. of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) (“It is well-established
 28 in our circuit that an amended complaint supersedes the original, the latter being treated thereafter

1 as non-existent. In other words, 'the original pleading no longer performs any function[.]')
2 (citations and internal quotation marks omitted).

3 5. Plaintiff is cautioned that failure to timely file a First Amended Complaint may result
4 in this action being dismissed without prejudice for failure to prosecute and/or failure to comply
5 with a court order. See Fed. R. Civ. P. 41(b); Link v. Wabash R.R. Co., 370 U.S. 626, 629-30, 82
6 S.Ct. 1386, 1388 (1962).

7 6. Defendant shall file its Answer to the First Amended Complaint or a motion pursuant
8 to Fed. R. Civ. P. 12 no later than **January 11, 2018**.

9 Dated this 21st day of November, 2017.

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11 /s/

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Fernando M. Olguin
United States District Judge
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